

**ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**OCT 3 1996**

In the Matter of )

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding )

PP Docket No. 93-253

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**COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING**

Loli, Inc., Trans Pacific Interactive, Wireless Interactive Return Path, L.L.C., and IVDS On-Line Partnership (hereinafter "IVDS Licensees") hereby submit their comments in the Further Notice of Proposed Rulemaking released September 10, 1996 in the above-captioned rulemaking proceeding.<sup>1/</sup>

The IVDS Licensees support the Commission's proposal to define "small business" as a company with average gross revenues less than \$15 million for the preceding three years and to define "very small business" as a company with average gross revenues less than \$3 million for the preceding three years. The IVDS Licensees agree with the Commission's view that a company's gross revenues is a more accurate indicator of its size than are calculations of net worth or annual profits. In addition, by adopting such a standard, which was previously adopted

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<sup>1/</sup> Sixth Report and Order and Further Notice of Proposed Rulemaking, ("Further Notice"), PP Docket No. 93-253, released September 10, 1996. The Further Notice stated that comments were due within 15 days of Federal Register publication, which occurred on September 18, 1996. Thus these comments are timely filed.

for broadband PCS, narrowband PCS, and 800 and 900 MHz SMR systems, the Commission will promote regulatory symmetry among competing wireless carriers.

The IVDS Licensees believe the proposed 5% "attribution" threshold for determining gross revenues and affiliations of IVDS applicants is too low. The IVDS Licensees would support the Commission's proposal to use the gross revenues of "controlling principals" for determining small business status. In the alternative, the IVDS Licensees favor a "25% equity exception" similar to that adopted for broadband PCS licensees. That structure allows an applicant with a control group structure to exclude assets and gross revenues of non-control group investors that hold 25% or less equity in the applicant. (See 47 C.F.R. § 24.709(b)(3)). The 25% equity exception was created for PCS licensees to "afford qualified [small business] bidders a reasonable measure of flexibility in obtaining needed financing from other entities . . . " Fifth Report and Order, 9 FCC Rcd 5532, 5602 (1994), recon. Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1995). IVDS applicants, particularly minority- and women-owned small businesses, face the same obstacles in obtaining financing as PCS applicants. The flexibility to obtain financing that was afforded to PCS licensees should also be extended to IVDS applicants. The IVDS licensees agree that the Commission should use a multiplier when interests are held through intervening corporations. Again, this would be consistent with the treatment of other wireless carriers.

The IVDS Licensees support the continuation of bidding credits for small businesses. In light of the Commission's proposed rule changes that eliminate provisions for minority- and women-owned businesses, the small business credit may be one of the few avenues remaining for minority- and women-owned businesses to enter the communications industry. Further, as

the FCC noted, the "capital requirements for IVDS will be relatively low," making IVDS one of the few services where small businesses can meaningfully participate in an auction. Thus, preservation of the bidding credit is consistent with the 1993 Budget Act, which requires that the Commission's auction rules "promote economic opportunity for a wide variety of applicants, including small businesses and businesses owned by minorities and women." 47 U.S.C. 309(j)(4)(C)(ii).

The IVDS Licensees support the Commission's proposal to create two "tiers" of bidding credits; one for small businesses and one for very small businesses. As the Commission previously recognized, such approach will "promote dissemination of licenses to a broader variety of applicants than a 25 percent bidding credit for all small businesses" and "that a tiered approach enhances the discounting effect of bidding credits because not all entities receive the same benefit." Report and Order, Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, 11 FCC Rcd 7824, 7849 (1996). The IVDS Licensees support a 15% bidding credit for small businesses and a 25% bidding credit for very small businesses.

The IVDS Licensees support the Commission's proposed increase in the upfront payment to \$2,500 per license for RSAs and \$9,000 per license for re-auctioning MSAs. The increase will deter speculation and is more likely to result in licenses being awarded to qualified, serious bidders.

The IVDS industry faces tremendous uncertainty as a result of unresolved technical and regulatory issues. In the area of technology, there have been numerous delays in the development of IVDS equipment that have hindered evolution of IVDS service. The

Commission, in fact, has already modified its rule to waive the one-year construction requirement for IVDS licenses (Report and Order, FCC 95-506, WT Docket No. 95-131 (1995). The IVDS Licensees (and others in the industry, see Letter to the Honorable Trent Lott from Dr. David L. Merideth, dated September 24, 1996, attached) propose that the Commission delay its planned winter auction of IVDS licenses until the technical and regulatory issues are resolved.

The Commission's delay of IVDS auctions until the technology issues are resolved is in the public interest. If IVDS equipment is available, it is more likely that IVDS systems in RSAs will be constructed and that a viable regional or nationwide network of IVDS service will develop to provide service to the public. A delay of the auction until the technical and regulatory issues are resolved will also benefit the Federal treasury. More parties will participate in the auction if technology is available to make IVDS a viable business, which will result in increased participation in the auction and higher auction prices. If there is an agency imperative to conduct an auction, the public would be better served if the Commission proceeded to license other wireless services that have ample available technology and are only waiting for Commission action to provide service to the public. For example, many cellular unserved areas have been denied service for years because auction rules have not yet been developed to resolve mutually exclusive applications. In the case of cellular, delay of the auction is denying service to the public and preventing completion of the nationwide seamless network of cellular systems. ("The most important goal [of the cellular unserved area rules] is the creation of a seamless and integrated nationwide cellular service." First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd. 6185 (1991).

In contrast, IVDS applicants face outstanding regulatory issues are substantially contributing to uncertainty about the value and use of the IVDS spectrum. Three petitions for reconsideration of the Commission's decision in Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, WT Docket No. 95-47 (1996) (hereinafter, "Mobility Order") are currently pending before the Commission. (See FCC Public Notice, Report No. 2150, Released August 30, 1996). The Commission's reconsideration of the Mobility Order could substantially change the value of IVDS spectrum. If the power limits for mobile units are increased, construction costs will be reduced and value will increase as the range of services which can be suitably implemented over an IVDS system increases. As long as there is uncertainty about whether IVDS licensees can, as a practical matter, provide mobile service, further investment in IVDS from both licensees and the financial community will be discouraged. There is also pending a request for clarification concerning the management of the two IVDS licenses by a single entity. In addition, the Commission has not yet acted on a petition for rulemaking requesting ten year license terms and extension of installment payments for IVDS licensees. As noted in the petition for rulemaking, the ten year terms would also increase the value of all IVDS spectrum because ten year terms would provide more certainty to licensees and investors alike that the industry would have sufficient time to develop. This, in turn, would increase the likelihood of development of regional and national IVDS systems. Such a result is clearly in the public interest.

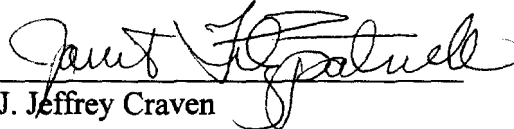
The IVDS industry also continues to face severe administrative processing problems at the FCC with respect to IVDS license payments. The accounting system that tracks installment payments has been plagued with inaccuracies since its inception. In fact, the licensees anticipate

that the inaccuracies in the accounting system, if unresolved, will cause a delay to any new auction as existing licensees contest the Commission's determination that defaults have occurred. Accordingly, the public interest would be served if the Commission resolved the IVDS accounting and computer tracking system issues prior to introducing a large number of new IVDS licensees into a flawed system. Scarce licensees and Commission resources would be conserved by avoiding numerous inquiries and corrections to obtain accurate account statements.

In light of the technical, regulatory and administrative issues outstanding that affect the ability of IVDS licensees to fulfill their construction and payment requirements, the IVDS Licensees request that the Commission delay the IVDS auction until IVDS equipment is commercially available, the Commission decides the scope of IVDS mobility and the length of IVDS license terms, and cures the problems with its accounting system.

Respectfully submitted,

**LOLI, INC.  
TRANS PACIFIC INTERACTIVE  
WIRELESS INTERACTIVE RETURN PATH,  
L.L.C.  
IVDS ON-LINE PARTNERSHIP**



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Dated: October 3, 1996

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FELLOW, AMERICAN COLLEGE  
OF LEGAL MEDICINE

24 September, 1996

VIA CERTIFIED MAIL  
Via Fax 202-224-2262  
(Attn: Brad Robinson)

The Honorable Trent Lott  
United States Senate  
487 Russell Senate Office Bldg.  
Washington, D.C. 20510

Senator Lott:

I am in receipt of the FCC's response to my letter dated July 2, 1996. To my dismay, the FCC refused to recognize all but one of the issues I enumerated and stated its intention to hold a winter IVDS auction without addressing concerns of current IVDS licensees. This refusal to recognize the problems that IVDS licensees are encountering further underscores my contention that the FCC must suspend all payment and build-out timetables for current licensees and delay auctioning the remaining spectrum until the following occurs:

1. a determination has been made as to a realistic time that it will take to manufacture IVDS equipment that has been tested and can be marketed to the public. In making this determination, the FCC should consider making some modifications to its current requirements for IVDS licensees including:

- a. increasing the allowable power for mobile uses to 1 watt;
- b. changing license terms to ten years;
- c. allowing ownership of both blocks of spectrum in a geographic area;

2. the problems with properly crediting the accounts of IVDS licensees have been resolved, and the accounting software is working properly; and

3. a list is made of all MSA licenses that are available for auction due to licensees defaulting on their downpayments or required installment payments.

Honorable Trent Lott  
24 September, 1996  
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Only after completion of the above should the FCC proceed with the auctions it references in its letter (preferably within ninety days after taking the above actions). Additionally, it must readjust its payment and build-out timetables to coincide with the more realistic deployment of IVDS technology.

I believe that viable services can be provided through the IVDS spectrum and am committed to working with manufacturers to make IVDS a viable service. However, I must have relief from the FCC's timetables which were issued under the false assumption that manufacturers had IVDS equipment ready to be deployed. I also need cooperation from the FCC to help me make this service marketable. I ask that you motivate the FCC to meet with me regarding the above so that the industry can move forward and the government can collect higher revenue from the issuance of IVDS spectrum.

Enclosed is a summary of the issues faced by IVDS licensees for your reference. I look forward to meeting with FCC staff on these issues.

Sincerely,

81

David L. Merideth

DLM:bmc  
Enclosure

cc: Mr. Jim Thomas  
Mr. Sanford Thomas  
Mr. Wirt Yerger, III  
Mr. W. M. Mounger, Jr.  
Mr. Robert Frantz  
Mr. Les Slaydon  
Mr. Will Vandell  
Ms. Nancy Douglas  
Mr. Bill Thomas  
Mr. Brad Robinson  
Mr. John Kuykendall



## **SUMMARY OF ISSUES PERTAINING TO FCC HANDLING OF IVDS MATTERS**

- A. Technology has not been developed and tested to the point where a viable service can be marketed to the public.
- B. FCC has a payment and build-out timetable that they are strictly enforcing despite the fact that no viable service can be marketed. This creates financial hardship on the licensees and places them in danger of losing their licenses when they have already invested significant time and money to date.<sup>1</sup>
- C. FCC has mishandled payments made by licensees and has yet to make the proper corrections to its accounting software.
- D. In allowing the IVDS licensees to use their spectrum to provide both a mobile and fixed service, the FCC restricted the power output for mobile use to 100 MW rather than allowing 1 watt as requested by many licensees. The 100 MW output limit restricts coverage to a small radius, thus requiring more cell sites and significantly raising the cost of build-out. There appears to be no compelling reason for requiring the 100 MW power restriction, especially in light of the financial hardship the requirement places on the licensees who desire to offer mobile service.
- E. The FCC has not reacquired the MSA licenses that were never issued due to defaults on the required down payments in the first auction held in July, 1994 and due to defaults on required installment payments. Additionally, the FCC has not auctioned the RSA licenses. Delay on the auction of these licenses has prevented the licensees from marketing a regional or national footprint. This is especially egregious due to the Commission's immediate reacquisition of PCS licenses.
- F. In the evolution of its auction licensing procedure, the FCC has adopted ten year licenses which are more suited to payment schedules and build-out requirements. However, the Commission continues to maintain a five year license terms for IVDS licenses.
- G. The FCC has failed to recognize that IVDS service could be greatly enhanced in both service offerings and deployment if licensees could own both blocks of spectrum issued in a geographic territory.
- H. Although the FCC has given public notice of licensees that defaulted on their downpayment, it has failed to reveal the names of licensees who defaulted on required installment payments. Thus, the IVDS industry is unaware of markets that are currently unlicensed and are up for reacquisition. Until a list of defaulted licensees and their markets is produced by the FCC, the IVDS industry is unable to market on a regional or nationwide basis.

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As of this date, licensees are required to make interest-only payments. However, beginning March 31, 1997, licensees will be required to begin paying principal, and, given that it is highly unlikely that any IVDS licensees will be producing revenue by that date, widespread defaults by licensees are likely to occur.